



## POLICE DEPARTMENT

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Asad Anwar  
Tax Registry No. 941351  
73 Precinct  
Disciplinary Case No. 2010-52

The above named member of the Department appeared before me on April 1, 2011 and April 26, 2011,<sup>1</sup> charged with the following:

1. Police Officer Asad Anwar, while assigned to the 73rd Precinct, while on-duty, on or about March 14, 2009, in the vicinity of Chester Street and Pitkin Avenue, in Kings County, did abuse his authority as a member of the New York City Police Department in that said Police Officer did use force against Mr. Jermaine Gibbons, to wit said Police Officer did use his hands and legs to strike Mr. Gibbons without police necessity.

### P.G. 203-11, Page 1 USE OF PHYSICAL FORCE

2. Police Officer Asad Anwar, while assigned to the 73rd Precinct, while on duty, on or about March 14, 2009, in the vicinity of Chester Street and Pitkin Avenue, in Kings County, violated his duty as a member of the New York City Police Department in that said Police Officer was discourteous to Mr. Jermaine Gibbons by stating in sum and substance: "What the fuck did you say?" *(As amended)*

### P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and Roger Smith, Esq., Civilian Complaint Review Board. The Respondent was represented by John Tynan, Esq.

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<sup>1</sup> The record was held open until May 16, 2011 for the submission of evidence.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent is found Guilty of Specification No. 1 and Not Guilty of Specification No. 2.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Jermaine Gibbons, Police Officer Il Baik, Theresa Ballenger, and Eartha Morris as witnesses. In addition, it submitted the tape and transcripts of Person A [REDACTED] Civilian Complaint Review Board (CCRB) telephone interview, dated April 27, 2009, as Department's Exhibits 1, 1A, and 1B.

#### Jermaine Gibbons

Gibbons, a resident of Crown Heights, Brooklyn, has been employed as a service aide at Kings County Hospital for approximately six months. Although he was arrested in relation to this incident, the case against him was dismissed. He has never been convicted of a crime. He filed a civil lawsuit against the City of New York and the Respondent with regard to this incident because he felt that what the Respondent did was wrong. His lawsuit was settled before trial in his favor. He has never before or since filed a complaint against a police officer.

Gibbons testified that on March 14, 2009, he was around Pitkin Avenue and Chester Street, in Brooklyn with his sister, Theresa Ballenger, who was there to pay a phone bill. Ballenger had driven the pair in her Mitsubishi, and Gibbons was seated in the passenger seat. When they arrived at the parking area, they were unable to find a spot, so Gibbons' sister parked by a hydrant on the corner of the block, where the telephone store was located. After they had parked, Gibbons stayed seated in the car for a minute and saw, in the rear view mirror, a police car coming up the block. At that point, Ballenger had already entered the store. After seeing the approaching police car, Gibbons decided to get out of the vehicle and jump into the driver seat so that he could move the car to another parking spot and avoid receiving a warning. Once Gibbons was in the driver's seat, the car in front of him pulled out and he pulled into the empty space. As he was pulling out of the spot near the hydrant, however, he saw the police car approach his vehicle from behind and double park. At that point, Gibbons exited his vehicle and approached the radio motor patrol car (RMP).

Gibbons approached the RMP driver (subsequently identified as Police Officer II Baik) and asked what he had done wrong. Baik informed him that there was a no standing sign near his initial spot. Gibbons argued to Baik that he had moved the car before the officers had approached and before the driver's partner (the Respondent) had begun to write the summons. According to Gibbons, Baik answered something to the effect of, "There's nothing I could do. There is a no standing sign." Gibbons stated that he did not notice people stopping to watch the conversation. Ballenger was still in the store and nobody came to get involved in the conversation. During the conversation, both officers remained in the RMP.

When Ballenger returned from the store, Gibbons was standing between her car and the police officers' car, and the officers were still seated in their car. Ballenger approached Gibbons, and she seemed very upset because she thought that the officers were giving her a ticket. Gibbons explained to her what was going on. He told Ballenger, "The officer is being a fucking dickhead." He noted, however, that he said "dickhead" to his sister not to the officer, although he admitted that he said it in a tone loud enough for the officers to hear. Gibbons testified that he said this only once and that he did so because he was upset that his sister was blaming him for the ticket. At this point, the officers were still in the car, and Gibbons and Ballenger were standing behind her car, about two to three feet away from the police car. Gibbons explained that no one else had stopped to watch this incident.

Gibbons testified that approximately 30 seconds after speaking with Ballenger, the Respondent exited his vehicle and aggressively walked, at a fast pace, toward him. The Respondent slammed his clipboard on the hood of the RMP and said to Gibbons, "What the fuck did you say?" Baik did not, at this time, leave the car. Following his statement to Gibbons, the Respondent punched Gibbons on the right side of his face, over and around his eye area.

Gibbons testified that his first reaction was to stop the Respondent's assault. He attempted to do this by blocking his face with his arms. His hands were closed, and at one point, he grabbed the Respondent's shoulder with his hands. The Respondent was still punching at Gibbons but none of those blows landed because Gibbons' arms prevented the jabs. At this time, Gibbons noticed a crowd beginning to form. Ballenger was standing next to him and shouting for the Respondent to get off of Gibbons. She told

Gibbons not to do anything. Gibbons continued attempting to shield himself and hold on to the Respondent.

Gibbons testified that the Respondent had control and began backing Gibbons out of the street, on to the sidewalk, and up against a wall. Gibbons described the Respondent telling him to get on the ground so that he could be handcuffed. Gibbons testified that he dropped to his knees, and the Respondent kneeled him in the face twice. Meanwhile, Baik exited the RMP. Gibbons recalled that he was handcuffed by one of the two officers, but he was unable to say who because he was lying flat on his stomach. Gibbons denied punching, striking with any part of his arm or leg, or even gesturing as though he was going to punch the Respondent at any time during the physical altercation. At no point did Baik strike or kick Gibbons.

Gibbons denied ever asking either of the officers for identification. Furthermore, he denied that the officers had indicated, at any point prior to the end of the encounter, that he was to be placed under arrest or given a summons for Disorderly Conduct. Gibbons denied that the officer issued any warning to him about his conduct that day. Gibbons denied that the encounter had anything to do with race. Neither he nor the officers made any racial remarks. Gibbons testified that after he was handcuffed, he saw a group of people crowding around his sister who, he later found out, were giving Ballenger their telephone numbers and information because they had seen everything. He denied personally hearing exactly what those people said.

After being handcuffed, the officers put Gibbons into the back of the RMP and transported him to the command. In the car, Gibbons testified that he did not converse with the officers except to tell the Respondent that he messed up, that he had done this to

the wrong guy, and that he would pay for his actions. Gibbons explained that he had said this because he believed that he was innocent and that the officer had gone too far.

Gibbons stated that the officers responded to his statements in the car by replying, "Shut the fuck up." Additionally, he heard them speaking amongst themselves, but he could not hear exactly what the officers were saying because they were mumbling. He stated that he had expected to simply receive a parking ticket and be allowed to go on his way. Instead, Gibbons was not given a ticket until he arrived at Central Booking. He was given two there: one for assault on a police officer and one for parking.

On cross-examination, Gibbons admitted that he received \$30,000 from the city as a result of his lawsuit, of which he got to keep \$20,000. He stated that he was unemployed at the time of the incident and had been for about three to four months. Gibbons admitted that he knew what fire hydrants were for and how essential they could become in emergencies. Gibbons agreed that he was aware that his sister's car was blocking the hydrant. He admitted that he had a driver's license at the time and was aware that parking in front of a hydrant was illegal. Furthermore, Gibbons acknowledged that moving the vehicle five to 10 minutes after seeing a spot open up did not detract from the illegality of where Ballenger's car was initially parked.

Gibbons agreed that the framework of the incident basically consisted of the Respondent, after writing a ticket for Gibbons, walking up and punching him in the face. Gibbons did not wear glasses at the time. Gibbons admitted that when he told Ballenger that the officer was being a "fucking dickhead," he did so loud enough for the Respondent and others on the street to hear. He noted, however, that it was not so loud as

to attract the attention of a crowd. During this interaction, he denied raising his voice at anytime prior to the “dickhead” comment.

Gibbons denied being conscious of the Respondent’s ethnicity. He testified that he had no idea whether the Respondent was white, black, or Indian. He stated that the Respondent looked Indian to him or perhaps Arab or Pakistani. Gibbons explained that an “Arab” is an Arabian, although he admitted that “Arab” was not the word he commonly uses to refer to someone of that descent. He denied finding “Arab” an offensive phrase. Gibbons denied having any physical altercations with officers of any ethnicity in the past. He did, however, admit that at some point he may have been stopped on the street by an officer.

Gibbons admitted that he exited his vehicle after pulling it away from the hydrant. He denied ever hearing the police officers tell him to stay in the car. Gibbons agreed that one of the officers in the car was writing him a ticket. He admitted that he approached the driver’s side of the car, but denied that the officers told him to stop. Gibbons described Baik as Asian, but he did not know if Baik was Chinese or Japanese.

Gibbons clarified that when the Respondent exited the RMP and slammed down his clipboard, he did so on the hood of his own vehicle, not on Ballenger’s. Gibbons testified that when the Respondent came toward him, he was leaning on the back of Ballenger’s car which was less than ten feet away from the RMP. He agreed that the time it took for the Respondent to exit the passenger’s side and head toward him was about five or six seconds. Gibbons explained that the Respondent walked from the left side of his car to the rear quarter of the driver’s side of Ballenger’s car, where Gibbons was standing. After slamming the clipboard, the Respondent threw eight to 10 punches, with

three or four of them actually making contact. Gibbons testified that after the punching, the Respondent began pushing him out of the street and on to the sidewalk. When the two were on the sidewalk, the Respondent ordered Gibbons to get on his knees. Gibbons denied having made any contact with the Respondent except grabbing his shoulder.

Gibbons testified that the telephone store that Ballenger had visited was the second store from the corner, approximately a ten-second walk from where her car was parked. It would not have been possible for her to see the car from inside the store, as it would have been necessary to walk around the corner in order to see the car. When Ballenger left the telephone store, Gibbons was already out of her car, standing by the driver's side window of the RMP. Gibbons admitted that when the officer stated, "What the fuck did you say?" his sister was standing next to him. He stated that he was almost certain that his sister had heard this.

Gibbons testified that he was in police custody for close to 72 hours. While in custody, he was asked if he wanted medical treatment. Although he accepted this offer, no medical treatment was ever rendered. He explained that the arresting officers were supposed to be his escorts, but they never showed up. Then, at Central Booking, the emergency medical technician failed to render treatment. He testified that he asked for help two or three times, but his name was never called for treatment. According to Gibbons, he suffered from head injuries, including a lump on his head and a slight headache. He was not bleeding, and he did not have a sore neck or loose teeth. Gibbons reaffirmed that after falling on the ground and being handcuffed, the Respondent kneed him in the face two to three times. He did not, however, have any cuts or lacerations to the face. He admits that about a hundred people watched the encounter, but he is not sure

if any of them took pictures. He did not take any photographs of his injuries himself. After being released from prison, his charges were dismissed by the judge. Gibbons then took himself to the hospital where he stayed for only a few hours.

Gibbons stated that on that day he weighed 275 pounds and that he is 5'9" tall. He admitted that he was larger than both of the officers. Gibbons acknowledged that he was speaking in a loud and aggressive manner about the Respondent, but he asserted that this did not give the Respondent the right to assault him. Gibbons denied throwing the first punch, although that is what he had heard that the Respondent told his sergeant. Gibbons did not know if the Respondent was prosecuted by the District Attorney's (DA) Office. Although Gibbons filed a CCRB complaint against the Respondent, he did not file a complaint at a precinct or DA's office. He reiterated that he won \$30,000, but he noted that he was looking for justice, not money, when he filed his complaint.

Gibbons testified that he did not file the lawsuit until a couple of weeks after the incident occurred. He was not working at the time, but he got a job a couple of months later. He denied that the incident had any effect on his job search. He admitted, however, that the encounter has left him a bit nervous any time he sees a police officer, regardless of their race. Gibbons stated that he has had some trouble with officers since the incident, that he has been occasionally harassed by them.

Gibbons explained that he has been harassed by police officers all of his life or at least as long as he has been allowed to roam the streets on his own, at age 14. He is now 28 years old. Gibbons testified that he has been harassed over a hundred times. He characterized this as, "Just enough more than enough." He agrees that in most instances,

he was merely patted down. He denied the officer's ethnicity having any correlation to the likelihood of his being stopped.

On redirect examination, Gibbons denied having ever filed a lawsuit, a complaint, or having sought any monetary compensation as a result of any other encounter involving the police. Gibbons explained that this incident was different from others because it was the first time an officer had assaulted him. He described feeling shocked and embarrassed and feeling as though he had to do something about it. He did not have a criminal record, had worked all his life, and felt that he had been assaulted for no reason.

On recross-examination, Gibbons testified that the embarrassment resulting from the Respondent's beating had nothing to do with the Respondent's race. He testified that the people watching the encounter were a mixed crowd. He denied that the crowd was predominately black, but was not sure what proportion of the crowd was made up of white or Spanish people. Gibbons testified that Crown Heights is heavily populated with black and Spanish people, but that it is a predominately black area.

Police Officer Il Baik

Baik, a six-and-a-half year member of the Department, is currently assigned to the 73 Precinct. He testified that he was familiar with the Respondent because they had worked together in the past as temporary partners. He explained that it was a day by day partnership that lasted just a day or two, and they did not work together for an extended period of time. According to Baik, this was just the normal course. He and the Respondent did not request different partners and were not separated from each other for any particular reason.

At approximately 5:15 p.m. on March 14, 2009, he and the Respondent were on patrol together. Baik was the RMP operator. The officers first saw Gibbons when Gibbons was in his vehicle parked next to a hydrant. He stated that he and the Respondent parked behind Gibbon's vehicle because there was a no standing at any time sign on that corner. He testified that his intention at that time was to write Gibbons a parking summons. He explained that while the Respondent was writing the summons, Gibbons exited his vehicle, approached the driver's side of the RMP, and asked the officers not to write the summons. The officers instructed Gibbons to get back into his car. Baik testified that he did not remember the exact language that Gibbons used when he approached the RMP, but acknowledged that it was not abusive. After Gibbons got back in his car, Baik testified that the two officers could hear him cursing at them in his vehicle. Baik explained that they could hear Gibbons, even though he was in the car, because he was very loud. Although Baik did not remember exactly what Gibbons said, he is sure that Gibbons was cursing because he was rambling for a good couple of minutes. Gibbons then got out of the vehicle and continued to curse at the officers. At that point, the Respondent got out of the RMP.

The Respondent did not tell Baik why he was getting out of the car, whether it was his intention to arrest Gibbons, or whether he intended to give Gibbons a summons for Disorderly Conduct. Baik testified that he followed the Respondent out of the vehicle because he felt he had to follow his partner, not because he had any independent reason for getting out. He only intended to approach and talk to Gibbons. He did not intend to arrest Gibbons at the point, nor did he notice a crowd beginning to form as Gibbons cursed at the officers from the rear of his car.

Baik testified that after leaving the RMP, he noticed that he had left it running idle, so he went back inside the vehicle. At that point, the Respondent was already outside the car. According to Baik, the Respondent asked Gibbons, "What the fuck did you say?" a couple of times. While Baik was under the impression that Gibbons said something prior to the Respondent speaking because it seemed that the Respondent was replying to something he had heard, Baik did not remember exactly what Gibbons said. Baik testified that as the Respondent asked Gibbons, "What the fuck did you say?" the two men were approaching each other in a non-aggressive manner. He denied seeing either man raise his hands or clench his fists. He did not feel at that time like Gibbons was a physical threat to either his partner or himself.

At that point, Baik stepped into the RMP and looked down to turn off the ignition and pull out the key. He was no longer looking at the Respondent. Baik stated that when he turned off the RMP, his head was down for about a second. He admitted that he was unable to hear when his head was inside the car with the car turned off, but he did hear the Respondent say, "What the fuck did you say?" even though his head was under the dashboard as he was turning off the car. He did not hear Gibbons respond in any way to the Respondent's question, and the Respondent's words were the last he heard when his head was under the dashboard. He denied a crowd was forming. He did not ask Gibbons for identification, nor did he recall the Respondent asking Gibbons for identification.

Baik testified that when he emerged from the RMP, having turned it off, both parties were holding each other by the shoulders. Baik illustrated this by holding his right arm away from his body, so that each man would have held the other with one hand on the other's shoulder as though keeping the other man at a distance. Baik did not know

whether or not the Respondent had anything in his hands at the time he approached Gibbons. Baik testified that when he got out of his vehicle, although he saw the two men holding one another, he did not see either throw a punch.

Baik did not observe that the encounter was in any way related to racial tensions, and he did not recall hearing any of the parties involved making racial or ethnic remarks. Baik stated that after he stepped out of the car for the second time, he took action. Baik described the Respondent pulling Gibbons over to the sidewalk, and Baik grabbed Gibbons by the shoulder while the two were still holding each other. Baik then tried to pull Gibbons to the ground and put him under arrest. Gibbons resisted at first, but Baik was eventually able to get him on the ground and handcuff him. Baik denied seeing the Respondent or Gibbons punch or kick each other. He denied that the Respondent, Gibbons, or he sustained any injuries as a result of the encounter. A crowd began to form while the officers were placing Gibbons under arrest as a result of the physical altercation. By physical altercation, Baik explained that he was referring to the handcuffing. Baik could not hear what the crowd was saying.

Baik testified that after handcuffing Gibbons, he and the Respondent put him in the back of the RMP and left the location because a crowd was gathering and the officers feared for their safety. The crowd seemed upset by what was going on. It took approximately two minutes to get to the 73 Precinct station house. Baik did not recall whether or not he discussed anything with the Respondent on his way there. He did not recall whether the Respondent told him what caused the physical altercation.

Baik admits that since going down to CCRB, he has had conversations with the Respondent regarding this incident. Baik stated that he only told the Respondent what he

had testified in court. Furthermore, he stated that the Respondent told him, during a post-CCRB conversation, that the reason he took actions was because Gibbons threw the first punch at him. Baik testified that was the first time he had heard anything like that.

On cross-examination, Baik testified that he has known the Respondent for three or four years and that he has never had a problem with him. Baik agreed that he saw Gibbons grabbing a uniformed member of service and that, in itself, was grounds for police action. As soon as he looked up from the dashboard and saw Gibbons grabbing the Respondent's shirt, Baik rushed to aid his partner because he believed that he might be in trouble. Baik acknowledged that he was the one who pulled Gibbons forward, grabbed his arms to get him away from the Respondent, and pushed Gibbons straight onto the ground. Baik acknowledged that Gibbons landed face first and that while he was the one who actually pushed Gibbons down, both officers placed the handcuffs on him. Baik denied that he or the Respondent ever kneed Gibbons in the face. He also denied ever seeing Gibbons hit in the face. Baik explained that it was only a matter of seconds between the time his head was under the dashboard and the time he got out of the RMP to help the Respondent.

Baik did not recall whether or not he saw the Respondent being pushed backward. Although Baik did not recall doing so, he stated in his CCRB interview that when he looked up from the dashboard he saw Gibbons trying to pull away from the Respondent in resistance, the Respondent was trying to grab Gibbons by his shoulder area with both arms, and Gibbons was trying to push the Respondent away by the chest, causing the Respondent to stumble. Upon review of the CCRB transcript, Baik agreed that it would be fair to say that Gibbons was acting aggressively during the altercation, that Gibbons

resisted arrest and also committed the felony of assaulting a police officer in the second degree. He agreed that in such instances officers have the right to defend themselves, yet he acknowledged that he did not see the Respondent throw any punches to control Gibbons. Gibbons later resisted both being placed into handcuffs and being placed into the RMP. Baik agreed that Gibbons was loud and used profane language even prior to the Respondent's approach. He did not, however, recall whether or not Gibbons called the Respondent names. Finally, Baik did not remember whether Gibbons' sister was present when the Respondent asked, "What the fuck did you say?"

On redirect examination, Baik denied knowing who started the physical altercation. Baik acknowledged that based on the CCRB transcript it appeared that Gibbons was trying to push the Respondent. Baik denied seeing Gibbons strike the Respondent, and admitted that he was instead moving away from the officer.

Theresa Ballenger

Ballenger, a resident of Brooklyn, has been employed as a medical biller at New York Methodist Hospital for 18 years. Ballenger testified that on the afternoon of March 14, 2009, she was shopping, running errands and paying bills. One of those bills was her cell phone bill, which she paid at an office on Pitkin Avenue. She explained that it was a very busy, sunny day when she arrived to pay her bill with her brother, Gibbons. She could not find parking, so she decided to park by a fire hydrant. Ballenger stated that she then told Gibbons to wait in the car while she paid the bill because it would only take five minutes. Five minutes later, she returned to the car and saw a police car parked behind it with two officers sitting inside. She was upset with Gibbons because she believed that

she was going to get a ticket. Gibbons told her that the police officer was being a “dickhead.” She clarified that Gibbons’ comments were focused at just one officer, the Respondent. Ballenger stated that she had just planned to take the ticket and move on, but the Respondent got out of the car, after hearing Gibbons call him a “dickhead,” and began walking toward Gibbons, lunging at him, no questions asked. Ballenger testified that there were blows thrown and that the Respondent threw the first punch and continued to strike Gibbons repeatedly, aiming for the head. Ballenger explained that Gibbons tried to protect himself by pushing the Respondent away, and she told Gibbons to “just stop.” The Respondent, however, was in “attack mode.” He pounded Gibbons, put him in a headlock, tried to choke him, and tried throwing him against the floor. Ballenger testified that she told Gibbons to stop resisting and to allow the officer to do what he was going to do. She noted that both she and Gibbons were asking what he had done and why the Respondent was coming at him in that manner.

Ballenger testified that at this point, the other officer (Baik) was shocked and did not do anything. Ballenger stated that Baik did not get out of the RMP until Gibbons was on the ground and the Respondent needed help handcuffing him. She subsequently stated, however, that she was not sure if Gibbons was already on the ground when Baik exited the RMP. In either case, Gibbons ended up on the ground. The Respondent was the one who handcuffed Gibbons. She remembered this because she had seen him knee Gibbons in the head and was on top of Gibbons. Ballenger testified that Gibbons was on the ground for about three or four minutes before the officers picked him up, put him in the car, and took him to the station house. She did not recall whether just one or both officers picked Gibbons up.

Ballenger recalled that as they were putting Gibbons into the RMP, there was a large crowd around her and she was in a panic asking people if they had filmed it or if she could have their information for future testimony. In particular, she remembered one man, Person A who stood with her until the crowd dissipated and who went to the station house with her. She did not see Gibbons when she first got there. She and Person A spoke with the desk officer and told him exactly what happened. They gave him the RMP number, the officers' badge numbers, and any other information they had collected. Ballenger stated that the desk officer then went to look in the books to find out who had taken the RMP out that day, but he noticed that the vehicle had not been signed out so he could not tell which officers had the car. Twenty or 30 minutes after her arrival at the station house, she saw Gibbons enter. She left the station house after she saw that Gibbons was okay.

On cross-examination, Ballenger testified that she has continuously worked as a medical biller for 18 years. In her CCRB interview, however, she identified herself as unemployed. She explained that although she has been continuously employed, the day of the interview may have been "the time [she] was laid off." Ballenger denied being aware of the Respondent's ethnicity.

She admitted that she had parked illegally and that she was willing to take the summons and walk away from the incident. She confirmed that she told Gibbons to just forget about it. She noted that the foul language occurred before she told Gibbons not to worry about it. Ballenger admitted that beforehand, her brother had called the Respondent a "dickhead." Given the context, she did not find that word offensive. She felt that officers had been called worse in the past and testified that in the same situation,

she would have said the same thing. Ballenger explained that her brother's speech was not necessarily loud, it was direct.

Ballenger stated that she felt that it was not completely fair for the officers to give her a ticket because Gibbons was in the car the entire time. She explained that in a city neighborhood, officers usually just ask people to move their cars. The officers in this case should have done the same. Instead, according to Ballenger, the officers got aggressive and wanted to write Gibbons a ticket even though he was willing to comply and move the car. Ballenger has received tickets in the past for meters and other things, but she noted that this was the first time that she had gotten a summons for parking in front of a fire hydrant. She acknowledged that parking in front of a hydrant is dangerous, but she explained that she thought it would be a quick thing. She blocked the fire hydrant for under five minutes. She does not regularly park illegally.

Ballenger stated that the Respondent charged at Gibbons for no reason and attacked him. She did not hear the Respondent say anything prior to his attack, but she presumed that he must have heard what Gibbons said, otherwise he would not have reacted in that way. She did not recall whether the windows of the RMP were up or down at that point or whether the car was on. The Respondent then punched Gibbons in the face repeatedly. She identified the Respondent as the officer who threw Gibbons to the ground, pushed his face into the ground, and then handcuffed him. The Respondent did not use actual weapons to attack Gibbons, but Ballenger emphasized that he used his hands as weapons. Ballenger agreed that throughout the encounter her brother was trying to cooperate. She denied that Gibbons ever grabbed the Respondent. Yet, she did acknowledge that Gibbons pushed the Respondent as he attacked in an attempt to defend

himself. Throughout the incident, she told Gibbons to remain calm. She asked the Respondent why he was acting that way, but he did not respond. She testified that following the incident she did not speak with either of the officers because she already had all of their information. According to Ballenger, at the time of the incident Gibbons was about 5'7" or 5'8 tall and weighed between 275 and 285 lbs. The Respondent was approximately the same height as Gibbons but much thinner.

She testified that when Gibbons was on the ground, it took two or three minutes before the officers picked him up off the floor. Although she was not absolutely sure, she reaffirmed that the Respondent had placed the handcuffs on Gibbons. She remembered that the Respondent's partner was "Oriental," although she could not tell whether or not he was Chinese or Japanese. She confirmed that the Oriental officer's only involvement in the incident was to help place Gibbons in the RMP. She reaffirmed that when Gibbons was placed into the RMP, he did not resist in any way.

Ballenger testified that she was completely shocked by the events and that she came to court to teach the Respondent a lesson: that he cannot go around "beating people" because he is a police officer. Although she asked people at the scene to take photographs, she did not receive any. Although she has a cell phone capable of taking photographs, she did not take any herself because she was more concerned with her brother at the time. Ballenger agreed that the beating went on for several minutes and that there were over a hundred people who had gathered to watch. She explained that nobody came to Gibbons' aid because when a police officer is involved, it best is just to stay back to avoid the possibility of a riot. She did, however, note that the bystanders had a lot to say. She explained that members of the crowd acknowledged that they had seen

what had happened, were confused by the officer's actions, and were generally shocked. The street was backed up with cars stopping to watch. Ballenger denied calling 911 or asking someone else to call because she was already dealing with the Department members and did not see any reason to call. No supervisor or additional members of the service responded to the scene.

On redirect examination, Ballenger testified that she paid attention to everything that took place during the incident, particularly when the Respondent beat up Gibbons. She paid less attention to the other surrounding circumstances. Gibbons did not have any injuries on his face following the incident.

Eartha Morris

Morris, a resident of Brooklyn, is currently unemployed and disabled. Her last job was in 2007 when she worked as an assistant to the technician for Verizon for seven years. Morris has never been arrested and does not have much interaction with police in her neighborhood other than walking by and speaking. Although she takes medication for various illnesses, the medications did not affect her perception on the afternoon of March 14, 2009. On that day, she was walking with her fiancé at the corner of Chester Street and Pitkin Avenue.

Morris observed a car parked on the corner and an RMP pull up behind it. Morris testified that the passenger of the RMP (the Respondent) approached the person in the parked car (Gibbons). The two started to exchange words, and the Respondent punched Gibbons in the face with his right hand. She testified that the Respondent punched Gibbons about four times and all of the punches landed. In addition to the first punch,

which was to the face, the other punches were directed at Gibbon's upper body, although Morris admitted that she was not sure whether they landed on the chest or shoulders. At the time, Morris was standing approximately eight away, and there was nothing obstructing her view of the incident. The street was well lit.

Morris stated that Gibbons kept repeating, "Why are you doing this?" while the Respondent was grabbing and tussling with him. Morris defined "tussling" as the Respondent grabbing Gibbons at the top of his body, while Gibbons tried to get away. Morris explained that Gibbons held his hands up [Morris illustrated this by holding both hands above her shoulders] to stop the Respondent from hitting him. Gibbons eventually grabbed the Respondent by his upper body while they were tussling, causing them to fall to the ground. The Respondent landed on top of Gibbons. According to Morris, the two were struggling for three or four minutes before they fell. The Respondent's partner was standing on the curb watching. A crowd began to form as Gibbons and the Respondent were tussling up against the car and fell on the floor. The crowd reacted to the scene by asking what was going on and why the officer was doing this. Morris stated that she was shocked because there was no reason for it. Although Gibbons appeared to be alone, Morris noticed that a woman (Ballenger) had walked up to Gibbons' car to ask him what was going on. Morris denied ever interacting with any of the people involved in the incident, but she did acknowledge speaking with Ballenger to tell her where the police precinct was and to exchange numbers.

After Gibbons and the Respondent fell to the ground, the Respondent was on top and had the other officer assist him in handcuffing Gibbons. The Respondent then took his book, sat on the hood of his car, and put Gibbons in the back of the RMP. Morris left

after Gibbons was placed in the RMP and taken away. She has not had contact with anybody involved with the incident since that time.

Morris did not hear any comments regarding race on that day from either the officers or Gibbons. Morris explained that she had come forward to testify because she did not like what she had seen.

On cross-examination, Morris acknowledged that she owned a phone but did not call 911 even though she did not like what she had seen. Nor did she go to a police station or to CCRB to make a report. Her cell phone does not have picture taking capability, and her fiancé did not have a phone at the time. Morris did not remember whether Gibbons had any visible injuries after the incident. According to Morris, Gibbons' car was legally parked. Despite being very familiar with the area, however, Morris was unsure whether a fire hydrant was located near Gibbons' parking spot.

Morris stated that after the RMP pulled up behind Gibbons' car, Gibbons got out of his car but did not speak with the officers. At that point, the officers were still in the RMP but were preparing to get out. Morris described Gibbons' ethnicity as African-American and the Respondent as Hispanic. Morris testified that Gibbons did not approach the officers after the officers got out of the RMP. He instead walked around the front of his car to the sidewalk on the driver's side, and the Respondent approached him. The two then exchanged words while she was standing about five feet from them. She did not hear either the Respondent or Gibbons use profane language or insult one another. Morris was not sure of the volume that the two used, but she denied that Gibbons' tone was loud enough to be discourteous to the uniformed law enforcement officer. She explained that they were speaking loud enough for her to hear some parts of what they

were saying from five feet away. Morris admitted that she sometimes feels as though she might have a problem hearing.

Morris explained that after the Respondent and Gibbons began speaking, it took only a couple of seconds before the Respondent punched Gibbons in the face. Gibbons' hands were at his side, and he did not provoke the punch. Morris stated that Gibbons and the Respondent were roughly of the same height and weight as each other. Morris did not recall how many others were on the street at the time. She recalled hearing members of the crowd asking the Respondent why he was doing what he was doing, but the Respondent did not respond because he was apparently busy.

Morris testified that the Respondent punched Gibbons in the face and then in the upper body four or five times before the Respondent began tussling, grabbing at Gibbons, and pushing him back against the car between the back panel and the door. Once Gibbons hit the door, both he and the Respondent fell to the ground. Gibbons landed first, face down. Morris did not recall how much time elapsed between when the Respondent threw the first punch and when Gibbons fell to the ground or how long the two were on the ground after they fell. Morris admitted that she saw only a small piece of the incident.

On redirect examination, Morris confirmed that she came to court voluntarily because she wanted to tell what happened.

Person A      CCRB Telephone Interview

Person A stated that on March 14, 2009, he was walking to the phone store when he saw Gibbons telling a police officer that he had just come out of an illegal space and

that he had done so before the officer wrote him the ticket. The officer gave Gibbons a ticket anyway, and Gibbons responded that this was "real messed up, man." Gibbons then returned to his car, and a Puerto Rican officer, who Person A felt had "no respect," came out of the car and asked Gibbons, "What did you say to me?" Person A described the Puerto Rican officer punching Gibbons in the face. He stated that he had never seen anything like that in his life, that he did not expect that kind of behavior from a police officer, but from a hoodlum. He was shocked.

Person A explained that he was not a bad guy himself. Although he has a police record, it was for "simple stuff" like smoking marijuana. After punching Gibbons, the Puerto Rican officer, with the help of a Chinese officer, took Gibbons to the station house. Person A noted that he was not sure whether the Puerto Rican officer continued to punch Gibbons, but he was sure that the two officers slammed him on the floor and handcuffed him as quickly as possible. Person A described the Chinese officer trying to do arm tactics to get Gibbons down, but he thinks that the Puerto Rican officer punched Gibbons several more times. Person A noted that the Chinese officer had not been particularly involved. He was only trying to put the handcuffs on Gibbons. Although Person A was not completely sure of the later details because some time had passed, he did vividly remember the Puerto Rican officer walking toward Gibbons and punching him point blank.

According to Person A when he arrived at the station house with Ballenger the Chinese officer was no longer with Gibbons. Some other Chinese officer was there. It had taken the officers a while to get there.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent is 28 years old and Pakistani. He has worked for the Department since July 2006 and has worked in the 73 Precinct for four and-a-half years. He did not have a steady partner and was working with Baik on March 14, 2009. There came a time that day when he noticed a car illegally parked, next to a fire hydrant, at the corner of Chester Street and Pitkin Avenue. It was daylight at the time, and the intersection, located in the middle of mostly commercial buildings, was very busy. The Respondent acknowledged that he had the responsibility of writing summonses to people blocking or obstructing fire hydrants and other safety apparatus. The Respondent testified that he was not aware of anyone sitting in the car at that time, so when he saw the car, he started writing a summons. He did this by getting out of the RMP, checking the parked car for about 10 seconds, and then returning to the police car to write the ticket. The Respondent was in uniform that day.

The Respondent stated that as he was writing the ticket, he heard someone (Gibbons) approach Baik to speak with him. According to the Respondent, Gibbons told Baik that he was in the car the whole time, but Baik told Gibbons that the Respondent would be writing the ticket anyway. The Respondent stated that he then got out of the RMP and continued writing the ticket. At that point, Gibbons approached him and said, "Officer, please don't write me a ticket. I'm right here." The Respondent, however, told Gibbons that he was almost done with the ticket. The Respondent stated that Gibbons responded to this by saying curse words like, "These fucking guys have nothing better to

do.” Based on Gibbons’ disorderly behavior, the Respondent asked him for identification, but Gibbons would not turn it over and continued to curse. The Respondent testified that at this point, Baik remained in the car. The Respondent stated that it was about four or five o’clock in the afternoon when this occurred and he did not notice any pedestrian traffic stopped to observe the interaction until Gibbons began cursing. The Respondent testified that he asked Gibbons again for identification, but Gibbons refused, stating, “I’m not giving you no fucking ID.”

At that point, the Respondent put his clipboard down on the police car and asked Gibbons to put his hands behind his back because he refused to show identification and because a crowd was beginning to form. The Respondent and his partner were the only officers in the area and a crowd of more than ten was gathering, so for safety reasons, he attempted to handcuff Gibbons by grabbing his arm. According to the Respondent, Gibbons then swung at him.

The Respondent is approximately 6’0” tall and weighed 185 lbs at the time of the accident. While Gibbons is approximately the same height, he was approximately a hundred pounds heavier. Gibbons’ swing did not make contact because the Respondent leaned back, pulling his head and shoulders away from the front of his body. Gibbons next put his hands on the Respondent’s shoulders and pushed him. The Respondent tried once again to grab Gibbons’ hand, and as they were fighting, Baik approached. The Respondent denied throwing any punches at that point. He explained that he was trying to grab Gibbons by the arms or hands to stop him from punching because Gibbons was taller and heavier. The Respondent testified that when Baik returned, he tackled Gibbons down on the sidewalk. Gibbons fell with his hand underneath him, by his chest, but he

was not giving up. He told the officers, "I'm not going. I'm not going." The Respondent testified that it took him anywhere between 45 seconds to a minute to put the handcuffs on Gibbons. Gibbons was not saying anything at that point. While nobody came to Gibbons' aid, the Respondent did hear someone in the crowd stating, "Just let them do what they're doing." The Respondent testified that about a minute elapsed from the time Gibbons threw the first punch to the time he was handcuffed. Gibbons' anger seemed to have subsided by that point. When a woman asked the Respondent for his name and shield number, he provided her with that information.

The Respondent testified that the 73 Precinct station house is about three blocks from where the incident took place. The Respondent acknowledged that he had accompanied Gibbons to the front desk and that a female (Ballenger) had come to meet Gibbons at the precinct. The Respondent denied Gibbons having any physical injuries or complaining to the desk sergeant of any physical injuries. While fingerprinting Gibbons, the Respondent recalled Gibbons claiming that he had been punched. The Respondent asked Gibbons if he needed medical attention, but Gibbons refused. The Respondent asked Gibbons where he remembered being punched, but Gibbons replied, "Don't worry about it." The Respondent testified that as a result, he put it into his book that Gibbons refused medical attention.

On cross-examination, the Respondent testified that he and Baik are in different squads, so whenever the Respondent's partner is not around, the two are sometimes put together. The Respondent denied having any problems in the past with Baik or asking for a different partner at any time. Gibbons' punches never actually made contact with him, so he did not need to seek medical attention of any nature.

The Respondent confirmed that he was seated in the passenger's seat of the RMP when he first saw Gibbons' car parked in front of a fire hydrant. The Respondent agreed that at the time he saw the car, he was under the impression that no one was in it. He stated, however, that even if he had known that there was someone in the car, he still might have given the individual a summons. He admitted to occasionally allowing individuals the courtesy of moving their car, if he knew that they were in or around the car.

The Respondent testified that before writing the ticket, he checked the car to see the registration, insurance and inspection. He then returned to the RMP to write the summons. (In an August 11, 2009, CCRB interview, however, he stated that he wrote the summons while standing in front of Gibbons' car.) The Respondent testified that he was seated in the car when he first saw Gibbons and that Gibbons approached the driver's side of the RMP and had a conversation with Baik. (Although the transcript of his CCRB interview showed the Respondent as denying Gibbons ever spoke with Baik, the Respondent did not recall ever making this denial.) After Gibbon's conversation with Baik, Gibbons approached the Respondent and asked that he be forgiven since he was planning to move his car. The Respondent informed Gibbons that he was almost done writing the ticket. The Respondent agreed that this conversation occurred between the front of the RMP and the rear of Gibbon's vehicle. The Respondent confirmed that, up until this point both, he and Gibbons were acting politely and no crowd had gathered to watch their interaction. According to the Respondent, Gibbons became belligerent only after the Respondent told him that he would continue writing the ticket. At that point, a crowd began to form. The Respondent disagreed with Baik's testimony that a crowd

gathered only after the physical altercation had taken place. He believed Baik's testimony was incorrect.

The Respondent agreed that at the time Gibbons became belligerent, Baik was sitting in the RMP with the doors closed and the windows up. The Respondent agreed that Gibbons' speech was loud and obnoxious enough to attract a crowd, but he was unsure if Gibbons' statements were loud enough for Baik to hear in the car because either the air conditioner or the heat was on. The Respondent denied ever asking Gibbons, "What the fuck did you say?" Instead, he asked Gibbons for identification because he thought he might have to issue Gibbons a summons for Disorderly Conduct. The Respondent confirmed that Gibbons then refused to give him identification and became belligerent.

The Respondent acknowledged that at that point he began to think that this might become an arrest and felt that he might need to signal to Baik about his intent to write a summons or arrest Gibbons. He tossed his Activity Log as a signal to Baik that something was going to happen. He testified that he tried to get Baik's attention after the fighting started, but that Baik must not have heard him. Baik did not leave the RMP until the physical altercation had already started. Although the transcript of the Respondent's CCRB interview showed the Respondent as stating that Baik did not exit the RMP until he saw the Respondent swinging at Gibbons, the Respondent testified that he never swung at Gibbons. The Respondent denied ever telling CCRB that he swung at Gibbons.

The Respondent agreed that it was probably Ballenger who spoke with him after the confrontation and asked for his identification. He agreed that it was probably also Ballenger who told Gibbons not to do anything to the officers and to let them do

whatever they had to do. The Respondent confirmed that Ballenger went to the station house to meet Gibbons and that she had been the only one there to meet him. The Respondent testified that Ballenger was the only one at the window and the only one that he spoke with. He did not recall whether or not there was somebody else there with her. He explained that there were other complainants there, so it was not clear who was there with Ballenger and who was not. He admitted, therefore, that it was possible someone else was with her.

#### FINDINGS AND ANALYSIS

This case involves a situation that escalated as two officers were preparing to issue a parking summons. On March 14, 2009, the Respondent and his partner for the tour, Baik, were in a police vehicle. Gibbons had been parked in a No Standing zone and the officers decided to issue him a summons. There is no question that Gibbons was upset about receiving the ticket. There is no question that he cursed at the officers and called the Respondent a “dickhead” at least once as they were preparing the summons.

What happened next is in dispute. The Respondent said that he asked Gibbons for identification and when Gibbons refused, he tried to handcuff him. Gibbons, he said, swung at him at that time. Gibbons denied taking a swing at the Respondent and claimed the physical confrontation began when the Respondent struck him apparently in response to the “dickhead” comment.

Several witnesses support Gibbons’ version of events. Ballinger is Gibbons’ sister and her testimony must be weighed accordingly, but Morris does not appear to have any connection to Gibbons and seems to be an independent and unbiased witness. The

same can be said for Person A whose hearsay statement was entered into evidence.

Taken together there is credible evidence that the Respondent struck Gibbons.

It is worth noting that the Respondent's version of events is wholly unsupported by any other witness. Respondent claims that he asked Gibbons for his identification at the point at which he had decided to charge him with Disorderly Conduct. However, even his partner, Baik, testified that a crowd gathered after the physical fight started and not before, eliminating any basis at all for issuing a Disorderly Conduct summons.

Specification No. 1 charges the Respondent with using force against Gibbons without police necessity and, based on the credible evidence, the Respondent is found Guilty of Specification No. 1.

Specification No. 2 alleges that the Respondent was "discourteous" to Gibbons when he said, "What the fuck did you say?" Although the Respondent denies making this statement, there is ample credible evidence that he did. The question then becomes, is this is an actionable courtesy?

Taken in a vacuum, using a vulgar word to a member of the public would probably be an actionable courtesy. This tribunal has repeatedly held that the use of profanity in a stressful situation is not actionable misconduct (see, for instance, *Disciplinary Case No. 80241/04* approved 05/09/05 and *Disciplinary Case No. 80777/05* approved 09/12/05). Clearly, the use of vulgarity in and of itself does not constitute actionable misconduct. In this case, the Respondent was responding in kind to Gibbons. In a sense, Gibbons set the tone of the conversation and set the bar on how to measure discourteous language. Under the circumstances, the Respondent's use of a vulgar word

does not constitute misconduct. The Respondent is found Not Guilty of Specification No. 2.

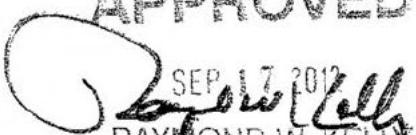
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of using physical force against Gibbons without police necessity. The Department has recommended a penalty involving the loss of 10 vacation days. This is inadequate to the circumstances. Given the avoidable and unnecessary nature of the Respondent's conduct, this Court recommends a penalty of the loss of 20 vacation days.

Respectfully submitted,

  
John Grappone  
Assistant Deputy Commissioner Trials

APPROVED  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ASAD ANWAR  
TAX REGISTRY NO. 941351  
DISCIPLINARY CASE NO. 2010-52

In 2010, the Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2008 and 2009. [REDACTED] The Respondent has no prior formal disciplinary record.

For your consideration.



John Grappone  
Assistant Deputy Commissioner -- Trials